

## **REMARKS**

### **I. Introduction**

Claims 1, 3 – 14, and 17 – 21 are presently pending and rejected.

### **II. Rejections under 35 USC § 103(a)**

Claims 1, 3 – 14, and 17 - 21 are rejected under 35 USC 103(a) as being unpatentable over Halliday (US 7,340,990) in view of Fox (US 2,977,231) and Rusoff (US 2,954,293).

Applicants respectfully request reconsideration, as Rusoff clearly seeks to exclude cocoa powders from the processes and compositions disclosed therein. Given a fair reading, one of ordinary skill in the art would not seek to combine the extracts of Rusoff with cocoa powder.

Rusoff clearly teaches there are problems with using cocoa powder in beverages. Turbid products are produced. Col. 1, line 26. Cocoa particles settle out and collect on the bottom of containers in the form of a sediment. Col. 1, lines 27 – 30. The use of starches and gum to hinder settling of insoluble cocoa powder particles results in foreign tasted, increased viscosity and sliminess. Col. 1, lines 30 – 45.

Rusoff continues to discuss methods of preparing water-soluble products containing full-bodied chocolate flavor and aroma. Col. 1, lines 47 - Col. 2, line 45.

It is clear that water soluble chocolate flavoring compositions should not have cacao solids. Col. 50, lines 49 – 51. One object of Rusoff is to provide for flavoring material which is substantially free of non-suspensible solids. Col. 3, line 1 – 4. The process of Rusoff allows the production of chocolate flavoring material which is free of solids. Col. 4, lines 10 – 12.

It is clear that Rusoff seeks to omit cocoa powder in its composition, and there is no teaching, suggestion or motivation that would lead one of skill in the art to combine its cocoa flavoring with cocoa powder.

The Examiner finds Rusoff leaves the door open for the presence of cocoa powder by reciting that the absence of the same is desirable and not required. However, Rusoff does not provide any teaching or suggestion to include cocoa powder in the extract, and the entire disclosure of Rusoff seeks to eliminate cocoa powder from the composition. Reliance on Fox to

incorporate cocoa powder would thus be a “step backwards” from the teachings of Rusoff, and frustrates the entire disclosure of Rusoff.

The Examiner finds Rusoff provides an embodiment wherein cocoa powder is reincorporated with the cocoa extract used to flavor beverages at column 8, lines 51 – 58. However, that particular embodiment does not provide any mention of incorporation of cocoa powder, only the “dry powdered extract of this invention [is reincorporated] into a liquor made from the dried, roasted, extracted cacao material....” and provides no explicit disclosure cocoa powder is necessarily present in the cacao material.

Finally, Applicants note the extract of Rusoff is not the same cocoa taste enhancer as presently claimed. Rusoff provides no discussion of macerating cocoa nibs, rather, only “extracted” without providing any details of the actual extraction. Secondly, the cacao beans of Rusoff are extracted with a mixture of one or more organic solvents and water (col. 3, lines 15 – 23). In contrast the cocoa taste enhance of the present invention is produced may macerating the cocoa nibs with water.

## **VI. PETITION FOR EXTENSION OF TIME**

Applicant(s) hereby request(s) a two (2) month extension of time in which to reply to file an response to the Office Action mailed May 24, 2011, thereby extending the time to respond to October 24, 2011.

The Commissioner is authorized to charge the required fee pursuant to 37 C.F.R. § 1.17(a) in the amount of \$560.00 in accordance with instructions concurrently submitted, and any additional fees due or credit any overpayment to Deposit Account No. 50-4255.

## **V. Summary**

Applicants have made a *bona fide* attempt to address all matters raised by the Examiner. Applicants respectfully submit that the application is now in condition for allowance, and therefore respectfully request that the outstanding rejections be withdrawn and that a Notice of Allowance be issued. If any remaining matters need to be resolved, Applicants respectfully request an interview with the Examiner prior to any official action being taken by the Office in

response to these arguments and amendments in order to facilitate allowance of the pending claims.

It is believed no fee other than an extension of time is currently required. If any additional fee is required, please charge the same to Deposit Account 50-4255.

Respectfully submitted,

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